



Billing Code 3410-05-P

**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**7 CFR Parts 759 and 762**

**Farm Service Agency**

**Rural Business-Cooperative Service**

**Rural Housing Service**

**Rural Utilities Service**

**7 CFR Part 1945**

**RIN 0560-AH17**

**Disaster Designation Process**

**AGENCY:** Farm Service Agency, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Service Agency (FSA) proposes to amend the disaster designation regulations with simplified procedures for designating USDA Secretarial disaster areas. Proposed changes to the regulation would delegate the designation authority to FSA State officials, remove the requirement that a request for designation of a disaster area be initiated and submitted by a State Governor or Indian Tribal Council to the Secretary, add a simplified disaster designation in severe drought situations, and change the USDA Secretarial disaster designation process from six steps to two steps for natural disasters, including special provisions for certain drought situations. FSA proposes to move the regulations to the same chapter of the Code of Federal Regulations

(CFR) as the FSA Emergency Loan (EM) Program regulations. FSA expects the amended procedures would result in faster designations of disaster areas, and result in more timely disaster assistance.

**DATES:** We will consider comments that we receive by **[Insert date 60 days after the date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** We invite you to submit comments on this rule. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Steve Peterson, Disaster Assistance Program Branch Chief, Production, Emergencies, and Compliance Division, Farm Programs, FSA, USDA, 1400 Independence Ave, SW, Mail Stop 0517, Washington, DC 20250-0517.
- Hand Delivery or Courier: USDA FSA Farm Programs, Production, Emergencies, and Compliance Division, Disaster Assistance Branch, 1400 Independence Ave, SW, Mail Stop 0517, Washington, DC 20250.

Comments will be available for inspection online at [www.regulations.gov](http://www.regulations.gov) and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is also available through the FSA home page at <http://www.fsa.usda.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Steve Peterson; telephone: (202) 720-5172. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

## **SUPPLEMENTARY INFORMATION:**

### Background

Declaring or determining counties to be disaster areas is important to the conduct of some programs administered by USDA. These include EM Program administered by FSA. The Secretary of Agriculture is authorized to designate counties as disaster areas to make emergency loans available (7 U.S.C. 1961) and those designations have been used to qualify counties for other programs such as crop disaster payment programs. The current disaster designation process is set out in 7 CFR part 1945.

Depending on the nature of the program involved FSA can, potentially, be called upon to administer four types of area disaster determinations:

- 1) USDA Secretarial disaster designations,
- 2) Presidential major disaster and Presidential emergency declarations,
- 3) FSA Administrator's Physical Loss Notifications, and
- 4) Quarantine designations by the Secretary under the Plant Protection Act or animal quarantine laws as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990 (referenced in 7 CFR part 761, which includes a definition of "quarantine" in accordance with 7 U.S.C. 1961).

A disaster designation specifies:

- 1) The specific disaster that resulted in the designation,
- 2) The incidence period (dates) of that disaster, and
- 3) The specific counties that are included in the designation.

Of the four types of disaster determinations listed above that FSA administers, the USDA Secretarial disaster designation is the one that most often impacts FSA programs and, currently, its process is the most complicated. This regulation proposes to amend FSA responsibilities for administering the USDA Secretarial disaster designation process. FSA proposes to simplify the processes and delegate them to the FSA State level. This regulation would not amend or change the process to make any other disaster determinations and the Presidential declarations made outside of USDA. Likewise, this document does not propose to amend the definition of “physical losses” or the documentation of those losses for the Administrator’s Physical Loss Notification administered under 7 CFR parts 761 and 764.

#### Proposed Change in Natural Disaster Definition

Under the current regulations, producers with eligible losses may apply for EM in counties named as primary disaster counties or those counties contiguous to such primary disaster counties under a disaster designation under any of the four types of determinations listed above. Eligible applicants for EM include “established farmers” as defined in 7 CFR part 761, who meet other regulatory requirements specified in 7 CFR part 764. This rule proposes to include in 7 CFR 759.3 a definition of “natural disaster” that is consistent with the definition of “natural disaster” in 7 CFR part 761, which provides the definitions used for emergency loans. It would remove the specific

examples of unusual and adverse weather conditions from the definition of “natural disaster” that is currently in 7 CFR part 1945. This would give FSA the flexibility to determine on the basis of production losses what events merit a disaster designation, rather than on whether the event fits one of the types on the list. The existing regulations in 7 CFR part 1945 define “Major disaster,” “Presidential emergency,” and “Natural disaster” uniquely, each with different events. The current lists of events in the existing regulations are inconsistent, include events such as storms that often do not cause widespread production losses, and do not include rare disaster types. “Major disaster” and “Presidential emergency” in 7 CFR part 1945 include “[a]ny hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe.”

The definition of natural disaster in 7 CFR part 1945 includes:

unusual and adverse weather conditions or natural phenomena include such things as: a major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado; a single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind; an electrical storm; or a severe weather pattern over a period of time which, due to excessive rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

Removing the lists of events from the definition of natural disaster would clarify that the Secretary has the authority to determine what constitutes a natural disaster, based on production losses, and add integrity to the process of disaster designation. It would also make the definition of “natural disaster” consistent within the FSA chapter of the CFR.

## Eligibility Requirements That Would Not Change With This Rule

To be eligible for EM loans and sometimes for other FSA disaster assistance program benefits, an operation must have been substantially affected by a disaster in the United States and be located in a county (or contiguous to such a county) that was designated as a disaster area by the Secretary, declared a major disaster or emergency by the President, received an FSA Administrator's physical loss notification, or under a quarantine imposed by the Secretary in accordance with 7 U.S.C. 1961. If a Presidential declaration is made, the Secretary will make emergency loans available, provided that the Presidential declaration is not solely for so-called "Category A" and "Category B" Public Assistance or Hazard Mitigation Grant Assistance made available by the Federal Emergency Management Agency. This policy would not change with this rule. (Category A and Category B Public Assistance provides assistance for other than actual disaster losses and Hazard Mitigation Grant Assistance provides assistance to alleviate or eliminate future disaster losses; neither of these categories are necessarily correlated with agricultural losses.) The basic eligibility requirements for emergency loans and FSA disaster assistance benefits would not change under the proposed amendments to the regulations. The eligibility requirements are set by the laws authorizing each program. Some FSA disaster programs, such as the Supplemental Revenue Assistance Payments Program (SURE), can only be triggered by a Secretarial disaster designation, as specified in the authorizing law. Regulations for SURE are in 7 CFR part 760, subpart G.

A Secretarial designation or a Presidential declaration may be required in order to make applicants in the designated counties eligible for Small Business Administration

(SBA) Economic Injury loans for agriculture related businesses; however, if the county is designated for individual assistance in the Presidential declaration, applicants will also be eligible for SBA assistance and a Secretarial designation will not be necessary. Existing procedures to avoid duplication of assistance between FSA and SBA programs would not change with this rule.

#### Current Six-Step Disaster Designation Process

The current USDA Secretarial disaster designation process described in 7 CFR 1945.20 is a six-step process that requires certain actions by the Secretary of Agriculture, a State Governor or Indian Tribal Council, the FSA National office, the FSA State Executive Director (SED), FSA county offices, the County Emergency Board (CEB), and the State Emergency Board (SEB). Some of the entities specified in the current regulations are identified by obsolete titles. The current regulations in 7 CFR part 1945 refer to the “State Food and Agriculture Council” and the “Local Food and Agriculture Council” responsibilities, which are currently performed by the SEB and CEB, respectively. Similarly, the functions of County Supervisor and State Director as described in 7 CFR part 1945 are now performed by the FSA County Executive Director and the FSA SED. This rule would update the language to reflect current practice.

The current regulations require that a request to the Secretary of Agriculture for designation of a disaster area must be made only by a State Governor or Indian Tribal Council. (That request is Step One of six steps in the current process.) As specified in the current regulations, this triggers review of the request at the FSA National office (Step Two), and the relevant County and State offices are required to prepare and send a

Loss Assessment Report (LAR) to the FSA National Office for each county named in the request. (The LAR is referred to as the Damage Assessment Report or DAR in 7 CFR part 1945.)

At the county level, when the LAR is complete, the CEB conducts meetings and approves or disapproves the LAR. (Step Three) The CEB is a county-level board that includes representatives of USDA agencies providing services in the area, which can include, but are not limited to, the Forest Service, the Natural Resources Conservation Service, and the National Institute of Food and Agriculture. The CEB representatives are responsible for reporting the occurrence of a disaster and assessing the damage caused by a disaster, that is, whether the natural phenomena substantially affected farmers with physical or production losses. The CEB submits the county-level approved LAR to the SEB for review and processing. (Step Four) At the State level, the SEB reviews and processes the LAR, prepares comments and recommendations, and submits it to the FSA National office. (Step Five) The FSA National office reviews the loss information on the LAR, determines eligibility as a “natural disaster” under part 1945, and prepares a package, including a letter of approval or disapproval, to be signed by the Secretary of Agriculture. (Step Six)

The current USDA Secretarial designation process has been in place for at least 20 years. The regulations have not been substantively revised since 1988. The Secretary received 183 requests for a Secretarial designation for Calendar Year 2009. Approximately 119 were approved.



## Proposed Two-Step Disaster Designation Process

This rule proposes to simplify the USDA Secretarial designation process from a six-step process to a two-step process for natural disasters. In addition, as discussed below, for severe drought occurrences, the disaster designation process would be simplified even further. This rule proposes that the determination of eligibility for counties to be named in USDA Secretarial disaster designations would be made at the State level. The SED would make the designation on behalf of the Secretary with a recommendation from the SEB. USDA Secretarial disaster designations could therefore be made more quickly. The rule also proposes to remove the requirement that a request must be initiated from the State Governor or Indian Tribal Council to the Secretary, and the requirement for National Office review of the information submitted by the SEB. Under the proposed regulation, Indian Tribal Councils and governors would still be able to initiate such a request to the CEB, SEB, or Secretary, but that request would no longer be required to initiate the disaster designation process. The proposed process would include the SED, CEB, and SEB. The SED would also be involved as the chairperson of the SEB. This proposed change is intended to simplify and speed up the process for USDA Secretarial disaster designations.

Under the new process proposed in this rulemaking:

Step 1 – The CEB would identify a disaster area and submit a request to the SEB for a disaster area recommendation.

Step 2 – The SEB, subject to such review as would prove appropriate, would make a disaster area recommendation on the basis of production losses and the SED would make the disaster designation on behalf of the Secretary.

After a disaster designation was made using this proposed two-step process, the Secretary would inform the Governor and Indian Tribal Council(s) of the designation. The SED would inform the FSA county offices, the FSA national office, and SEDs in neighboring states of the disaster-affected contiguous counties in those states.

A farmer, Indian Tribal Council, or the local governing body could initiate the process by reporting production losses or drought conditions to the CEB or SEB or, if the Indian Tribal Council or local governing body so chooses, initiate the process directly to the Secretary. If the CEB found that drought conditions were not sufficiently severe to trigger the streamlined process for drought disaster determinations, losses could still be sufficient to initiate the proposed two-step Secretarial disaster designation process. A farmer, Indian Tribal Council, or local governing body could also provide information to support a determination of an Administrator's Physical Loss Notification.

The determination of a disaster does not and would not remove or replace any other eligibility requirements for any producer under any programs. The process of qualifying for EM would still require determination of individual production losses. This proposed rule would not represent a change from the current regulation with regards to loss thresholds. The current regulations use a threshold of 30 percent loss countywide of the normal year's dollar value of all crops or loss by a single enterprise. That threshold would not change with this rule. However, consistent with current regulations, the proposed rule would continue to allow for disaster determinations to be made for EM purposes only if the Secretary determines that, although the 30 percent loss countywide threshold has not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such

extenuating circumstances as to warrant a finding that a qualifying natural disaster has occurred.

This proposed rule would consolidate provisions regarding instances in which EM eligibility is generated by a general crop loss in a county, the losses of a particular enterprise, or other special circumstances. These changes are needed to streamline the structure of the regulations, but are not intended to cause any substantive change.

To streamline the process for disaster determinations in the case of certain drought occurrences, the proposed amendments to the regulation would add a nearly automatic designation for any county in which drought conditions, as reported in the U.S. Drought Monitor (<http://www.drought.unl.edu/dm/monitor.html>), meet the drought intensity value of at least D2 (Drought-Severe) for 8 consecutive weeks. The U.S. Drought Monitor is the only such tool currently available; it is a widely recognized and objective source of drought information. It is specifically referenced in the 2008 Farm Bill as one of the eligibility “triggers” for the Livestock Forage Disaster program. Under the proposed rule, once a county meets the D2 threshold for 8 consecutive weeks, the SED will automatically designate the county; no LAR will be required. Any county that has a portion of its area in a drought intensity value of D3 (Drought - Extreme) or higher at any time during the growing season of the affected crops would be considered a disaster area. Streamlining the process for disaster determinations for severe drought would help reduce paperwork and documentation requirements at the FSA local level, and is intended to make the process more efficient and reduce FSA costs. It would not remove all documentation requirements; documentation of loss above the thresholds would still be required. Individual producer losses would still need to be documented for

EM eligibility. This rule would not change the paperwork or documentation requirements for producers. This proposed amendment would both streamline the process and add a quantifiable standard for determining primary county eligibility due to drought and drought-related disasters.

#### Summary of Proposed Changes to the Disaster Designation Process Regulations

This rule proposes changes to the regulations to simplify the disaster designation process and to reorganize the disaster designation regulations. In addition to the substantive changes described in this document, FSA proposes to move the disaster designation regulations from 7 CFR part 1945 to 7 CFR part 759. This would better organize the FSA regulations and incorporate the disaster designation process near the FSA EM regulations in 7 CFR part 764 and the Indemnity Payment Programs regulations in 7 CFR part 760. The CCC disaster program regulations will be in 7 CFR parts 1439 and 1480; chapter XIV of title 7 of the CFR is designated for CCC. The current 7 CFR part 1945 includes information relevant to internal actions in designating disaster areas, relationships with other federal government organizations, EM training, and providing notifications; such information is not required to be in the regulation because it does not impose requirements on the public or define benefit eligibility. For example, the processes on extending termination dates and the relationship between the Administrator's notification and a Secretarial designation from § 1945.20 are not changing; they are being removed from the rule because they are internal processes and not substantive such that need to remain in the rule. Similarly, this rule would remove information in the regulations about internal FSA processes for 24-hour "flash reports."

FSA proposes to remove this internal and procedural information from the regulations.

This information will be included in FSA internal operating guidelines and directives that are anticipated to be issued at approximately the same time as the final regulation.

FSA also proposes to make a conforming change to amend 7 CFR part 762, “Guaranteed Farm Loans,” to remove a reference to 7 CFR 1945 and replace it with a reference to the new part 759.

The following table summarizes section by section the amendments FSA proposes in moving the regulations into the new part 759, using the Table of Contents from the existing part 1945.

Current Section (# and heading)	New Proposed Section (# and brief explanation of change)
§§ 1945.1, 1945.3-4, and 1945.7-17 – Reserved	None – Section would be removed.
§ 1945.2 – Purpose.	§ 759.1 – Purpose. - Section would be amended to reflect proposed streamlined disaster designation process.
§ 1945.5 – Abbreviations. § 1946.6. – Definitions.	§ 759.2 – Abbreviations and Definitions. Abbreviations for agencies not involved in the FSA process would be removed. Abbreviations no longer used in the section would be removed. Abbreviations for entities now involved including SEB, CEB, etc., would be added. Definitions would be consolidated and edited to be consistent with 7 CFR part 761. Except for EM, provisions allowing exceptions for production loss thresholds would be removed. Definitions of disaster and farmers would be removed; there are suitable definitions in 7 CFR part 761. Definition of normal year’s dollar value would be amended for plain language and to remove references to entities no longer involved in the FSA

Current Section (# and heading)	New Proposed Section (# and brief explanation of change)
	process. Definitions of incidence period and national office would be removed.
§ 1945.18 - United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).	None – Section would be removed. The responsibilities of the State and local FAC are now performed by the SEB and CEB, as would be described in § 759.5.
§ 1945.19 - Reporting Potential Natural Disasters and Initial Actions.	§ 759.5 – Secretarial Disaster Area Determination and Notification Process. This section would describe the streamlined Secretarial and SEB regular and drought determination processes. The internal processes described in § 1945.19 would be removed.
§ 1945.20 – Making EM loans available.	§ 759.6 – EM to be Made Available. This section would describe the “trigger” for EM availability under the 4 types of disaster designations, which would be the same 4 types as under § 1945.20. Provisions concerning the internal processes of notification within FSA and with other departments would be removed. The processes on extending termination dates and the relationship between the Administrator’s notification and a Secretarial designation would not change; these would be removed from the rule because they are internal processes.
§ 1945.21 - Reporting and Coordination Requirements.	None – Section would be removed. Provisions concerning the internal processes of notification within FSA and with other departments would be removed.
§ 1945.25 - Relationship Between FmHA or Its Successor Agency under Public Law 103-354 and FEMA.	None - Section would be removed. Provisions concerning the processes of notification between FmHA and FEMA would be removed.
§ 1945.26 - Relationship between FmHA or its successor agency under Public Law 103-354 and SBA.	None - Section would be removed. Provisions concerning the processes of notification between FmHA and the

Current Section (# and heading)	New Proposed Section (# and brief explanation of change)
	SBA would be removed.
§ 1945.27 - Relationship between FCIC and FmHA or its successor agency under Public Law 103-354.	None - Section would be removed. Provisions concerning the processes of notification between FmHA and FCIC would be removed.
§ 1945.28 - Relationship between ASCS and FmHA or its successor agency under Public Law 103-354.	None - Section would be removed. Provisions concerning the processes of notification between FmHA and ASCS would be removed.
§ 1945.30 - FmHA or its successor agency under Public Law 103-354 Emergency Loan Support Teams (ELST).	None - Section would be removed. Provisions concerning the processes of notification internal to FmHA would be removed.
§ 1945.31 - FmHA or its successor agency under Public Law 103-354 Emergency Loan Assessment Teams (ELAT).	None - Section would be removed. Provisions concerning the processes of notification internal to FmHA would be removed.
§ 1945.35 - Special EM loan training.	None - Section would be removed. Informational section about internal training program has been removed.
§ 1945.45 - Public information function.	None – Section would be removed. Non-regulatory informational section has been removed.

#### Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this proposed rule.

#### Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601), FSA is certifying that this rule would not have a significant economic effect on a substantial



number of small entities. New provisions in this rule would not impact a substantial number of small entities to a greater extent than large entities. FSA anticipates that the proposed rule would not require submission of any additional information by the public. It is expected to be revenue-neutral, neither increasing nor decreasing benefits for producers as a whole. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Environmental Review

FSA has determined that the simplifying procedures for designating USDA Secretarial disasters identified in this proposed rule is considered administrative in nature and does not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799), no environmental assessment or environmental impact statement will be prepared.

#### Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This

rule neither provides Federal Financial assistance or direct Federal development; it does not provide either grants or cooperative agreements. Therefore, this program is not subject to Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

#### Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule would not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Although this rule removes the requirement for a disaster designation request by a governor or Tribal governor, it still allows such a request. Therefore, consultation with the States is not required.

## Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

FSA has consulted with the USDA Office of Tribal Relations and has concluded that this rule will not have a substantial direct effect on Indian tribes and no formal Tribal consultation under EO 13175 is required. FSA has committed to conduct an informational webinar to explain this rule to all interested Indian Tribes once this rule has been finalized.

## The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Public Law 104-4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and

Tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act of 1995

The amendments in this proposed rule require no revision to the information collection that was previously approved by OMB under control number 0560-0170. Although this proposed rule would streamline the disaster designation process, removing the requirement for a State governor or Indian Tribal Council to initiate a request for a Secretarial disaster designation, it does not prohibit that action and may therefore not result in a reduction in burden hours. Any change in burden hours will be documented in the next information collection request.

#### E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### Federal Assistance Program

These changes affect the following FSA program listed in the Catalog of Federal Domestic Assistance:

10.404 -- Emergency Loans

## List of Subjects

### 7 CFR Part 759

Administrative practice and procedure, Agriculture, Authority delegations, Disaster assistance, Loan programs - Agriculture, Reporting and recordkeeping requirements.

### 7 CFR Part 762

Agriculture, Grant programs-Agriculture, Reporting and recordkeeping requirements.

### 7 CFR Part 1945

Agriculture, Disaster assistance, Drug traffic control, Loan programs – Agriculture, Reporting and recordkeeping requirements.

For the reasons discussed above, FSA proposes to amend 7 CFR chapters VII and XVIII as follows:

### 7 CFR Chapter VII

1. Add part 759 to read as follows:

#### **PART 759—DISASTER DESIGNATIONS AND NOTIFICATIONS**

Sec.

759.1 Administration.

759.2 Purpose.

759.3 Abbreviations and definitions.

759.5 Secretarial disaster area determination and notification process.

759.6 EM to be made available.

Authority: 5 U.S.C. 301, 7 U.S.C. 1961 and 1989.

**§ 759.1 Administration.**

(a) This part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented.

(c) The Administrator will take any action required by the regulations of this part that the Administrator determines has not already been taken. The Administrator will also:

(1) Correct, or require correction of any action taken that is not in accordance with the regulations of this part or

(2) Require withholding taking any action that is not in accordance with this part.

(d) No provision or delegation in these regulations will preclude the Administrator or a designee or other such person, from determining any question arising under this part, or from reversing or modifying any determination made under this part.

**§ 759.2 Purpose.**

(a) This part describes and explains the types of incidents that can result in an area being determined a disaster area, making qualified farmers in such areas eligible for Emergency loans (EM) or eligible for such other assistance that may be available, based on Secretarial disaster designations.

(b) This part specifies the responsibility of the County Emergency Board (CEB), State Emergency Board (SEB), and the State Executive Director (SED) on behalf of the Secretary of Agriculture in regard to Secretarial Designations; the factors used in making a natural disaster determination; the availability of EM when a Presidential declaration is

made or a USDA quarantine is imposed by the Secretary; and provides SED actions in regard to requesting a physical loss notification and USDA quarantines.

**§ 759.3 Abbreviations and definitions.**

(a) Abbreviations.

CEB means the County Emergency Board.

CED means the County Executive Director.

DAFP means the Deputy Administrator for Farm Programs of the Farm Service Agency.

EM means Emergency loan.

FSA means the Farm Service Agency.

LAR means the Loss Assessment Report.

NASS means the National Agricultural Statistics Service.

SEB means the State Emergency Board.

SED means the State Executive Director.

USDA means the United States Department of Agriculture.

(b) Definitions.

Contiguous county is used in reference to another county, any county whose boundary touches at any point with that of the other county.

County is used when referring to a geographical area, a local administrative subdivision of a State or a similar political subdivision of the United States generally considered to be in county usage, for example, a “county” or “parish.” Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

CEB or the County Emergency Board is comprised of the representatives of several USDA agencies that have responsibilities for reporting the occurrence of, and assessing the damage caused by, a disaster, and for requesting approval in declaring a county a disaster area.

CED or the County Executive Director is the person who is in charge of administering the local FSA county office for a particular county.

Disaster area is the county or counties declared or designated as a disaster area as a result of natural disaster related losses. This includes primary counties and counties named as contiguous to those counties declared or designated as a disaster area.

LAR is a loss assessment report prepared by the CEB relating to the State and county where the potential disaster occurred and for which county or counties the CEB is responsible. The LAR includes as applicable, but is not limited to, starting and ending dates of the disaster, crop year affected, type of disaster incident, area of county affected by disaster; total number of farms affected, crop loss or pasture loss data associated with the applicable disaster (or both types of losses), livestock destroyed, and other property losses.

Natural disaster is a disaster in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical losses or severe production losses or both.

Normal year's dollar value is the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county, multiplied by the average commodity price for the 36 months immediately preceding the disaster year for each crop, using data from NASS where available.



Presidential declaration is a declaration of a disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-2) requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

Primary county is a county determined to be a disaster area.

Production losses (severe) within a county are those in which there has been a reduction county-wide of at least a 30 percent or more loss of at least one crop in the county.

SEB is comprised of the representatives of several USDA agencies having emergency program responsibilities at the State level. The board is required to respond to emergencies and carry out the Secretary's emergency preparedness responsibilities. The FSA State Executive Director serves as the Chairperson of the USDA SEB in each State and is responsible for providing the leadership and coordination for all USDA emergency programs at the State level.

Severe physical losses mean, for the purpose of determining an Administrator's declaration of physical loss, losses that consist of severe damage to, or destruction of: Physical farm property including farmland (except sheet erosion); structures on the land including, but not limited to, building, fences, dams; machinery, equipment, supplies, and tools; livestock, livestock products, poultry and poultry products; harvested crops and stored crops.

Substantially affected is when there has been a natural disaster as defined in this section, and the applicant has sustained qualifying physical or production losses, as defined in this section.

Termination date is the date specified in a disaster declaration, designation, or notification that establishes the final date after which EM applications can no longer be accepted. The termination date is the first business day that occurs on or after 8 months from the date of the disaster declaration or designation.

U.S. Drought Monitor is a collaborative effort between Federal and academic partners that is produced on a weekly basis to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://www.drought.unl.edu/dm/monitor.html>.

United States means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§ 759.5 Secretarial disaster area determination and notification process.**

(a) U.S. Drought Monitor. In the case of severe or extreme drought, as defined in this section, the SED will designate the relevant area as a disaster area. A LAR will not be required.

(1) If any portion of a county is physically located in an area with a Drought Monitor Intensity Classification value of D3 (drought - extreme) or higher during any part of the growing season of the crops affected by the disaster in the county, then the county will be designated a disaster area by the SED.

(2) Any county that meets the threshold Drought Monitor Intensity Classification value of D2 (drought-severe) for at least 8 consecutive weeks during the growing season of affected crops will be designated a disaster area by the SED.

(b) CEB and SEB recommendations. CEB will identify potential disaster areas and make a disaster designation recommendation request to SEB when a disaster has resulted in severe production losses. A farmer(s), Indian Tribal Council, or the local governing body may initiate the process, by reporting production losses or drought conditions to the CEB.

(1) Except as provided for extreme or severe drought in paragraph (a) of this section, CEB will submit a request with a LAR to SEB for review and recommendation for approval by the SED. CEB's written request and SEB recommendation must be submitted to SED within three months of the last day of the occurrence of a natural disaster as determined by the SED.

(2) If SEB determines a natural disaster has occurred, SEB will forward the recommendation to SED. The natural disaster may include drought conditions that were not sufficiently severe to meet the criteria in paragraph (a) of this section. Since the U.S. Drought Monitor tracks only drought conditions, not specifically agricultural losses resulting from those conditions, it is possible for a drought that does not meet the criteria in paragraph (a) of this section to result in production losses that constitute a natural disaster.

(3) SED will make the disaster area determination on behalf of the Secretary subject to such review by DAFP as may be appropriate, including that the delegation of authority to the SED may be revoked. In all cases, DAFP may reverse any SED determination.

(c) Eligible production losses. Except as provided in paragraph (d) of this section, to be determined to be a disaster area, the county must have had production

losses of 30 percent of at least one crop in the county due to an unusual and adverse weather condition or natural phenomena.

(d) Discretionary exception to production losses for EM. The SED or Secretary may determine that although the conditions specified in § 795.5(c) have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances, as to warrant a finding that a natural disaster has occurred for the purpose of making EM available only. In making this determination, the SED or Secretary may consider such factors as the nature and extent of production losses; the number of farmers who have sustained qualifying production losses; the number of farmers that other lenders in the county indicate they will not be in position to provide emergency financing; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and any other factors considered relevant.

**§ 759.6 EM to be made available.**

EM will be made available under part 764 of this chapter in disaster areas determined as follows:

(a) Secretarial designations. When production losses meet the requirements in § 759.5 or if the discretionary exception to production losses for EM under § 759.5(d) has been exercised and the SED has acted on behalf of the Secretary to make a disaster area determination.

(b) Physical loss notification. When only physical losses occur, the SED will submit a request to the FSA Administrator to make a determination that a natural disaster has occurred in a county, resulting in severe physical losses. If the FSA Administrator determines that such a natural disaster has occurred, then EM physical loss loans can be made available to eligible farmers for physical losses only.

(c) USDA quarantine. Any quarantine imposed by the Secretary of Agriculture under the Plant Protection Act or the animal quarantine laws, as defined in section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990, automatically authorizes EM for production and physical losses resulting from the quarantine.

(d) Presidential declaration. Whenever the President declares a Major Disaster Declaration or an Emergency Declaration, the Secretary will make EM available to eligible applicants in declared and contiguous counties, provided:

(1) The Presidential declaration is not solely for Category A or Category B Public Assistance or Hazard Mitigation Grant Assistance.

(2) The Presidential Major Disaster declaration is for losses due to severe, general disaster conditions including but not limited to conditions such as flood, hurricane, or earthquake.

## **PART 762— GUARANTEED FARM LOANS**

2. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

**§ 762.106 [Amended]**

3. Amend § 762.106(b)(2) and (c)(4) by removing the reference “part 1945, subpart A of this title” and adding in its place each time it appears “§ 761.2(b) and part 759 of this chapter”.

**PART 1945 [REMOVED]**

4. Under the authority of 5 U.S.C. 301, part 1945 is removed.

Signed on October 20, 2011.

Karis T. Gutter,  
Acting Under Secretary,  
Farm and Foreign Agricultural Services.

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